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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,825	01/23/2004	Jan Weber	1001.2246101	5021
28075 7590 01/28/2009 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
EXAMINER				
MCEVOY, THOMAS M				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
01/28/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/763,825

Applicant(s)

WEBER ET AL.

Examiner

THOMAS MCEVOY

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): The 35 U.S.C. 102(e) rejection of claim 5 (now amended claim 1).
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734

Continuation of 3. NOTE: The amendments to claims 1 and 50 change the scope of their dependent claims.

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the 35 U.S.C. 102(e) rejection of claim 5 (now amended claim 1), Applicant's arguments are persuasive and the rejection is withdrawn. Regarding the 35 U.S.C. 103(a) rejection of claim 5 (now amended claim 1), Applicant's arguments have been fully considered but are not persuasive. Applicant argues that Couvillon is only available as prior art under 35 U.S.C. 102(e) and cannot be used in a 35 U.S.C. 103(a) rejection of a commonly owned application. Examiner notes that Couvillon is available as prior art under 35 U.S.C. 102(a) and therefore is not precluded from use as prior art under 35 U.S.C. 103(a). Regarding claims 28 and 60 (now amended claim 50) Applicant argues that there is no motivation to place the electroactive polymer strands underneath the balloon of Maseda and therefore it is not merely a matter of design choice because it might impact the functionality of the device. Examiner respectfully disagrees. Examiner has cited numerous passages from Maseda in the previous Office Action of record which provide the skilled artisan with ample motivation to incorporate the strands beneath the balloon. For example, Maseda shows outer tube 114 mimicking a balloon using the electroactive polymer strands. Tube 116 underlies the balloon. Maseda discloses that the balloon can incorporate the electroactive polymer strands. One of ordinary skill in the art would recognize that the same strand structure disclosed for tube 114 (Figure 5A) without any modification could be used for tube 116 and this mechanism could expand the balloon. This would be an obvious way to apply Maseda's suggestion of incorporating the strands into the balloon. Furthermore, Maseda broadly suggests that the strands may be configured into any section of the device (col. 8, lines 6-10). Given this suggestion, one of ordinary skill in the art would look to all sections of the device (including areas on and/or beneath the balloon) to incorporate the disclosed strand structures. When one of ordinary skill in the art considers ways to modify the balloon interior with the strands (as suggested by Maseda) and the structure of Figure 5A, either the above modification or directly attaching the strands to the interior of the balloon would be obvious.